



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
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April 11, 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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Re: In the Matter of Federal-State Joint Board on
Universal Service
CC Docket No. 96-45

Dear Secretary Caton:

Enclosed are an original and four copies of the Initial Comments of the Pennsylvania Public Utility Commission to the Notice of Proposed Rulemaking and Order Establishing Joint Board in the above-captioned proceeding. We have also served a copy of our Comments upon all Federal-State Joint Board members in accordance with the attached service list.

By separate cover letter, in accordance with paragraph 144 of the Commission's Order, we have also submitted a copy of our Comments on diskette to Ernestine Creech of the Commission's Common Carrier Bureau.

Very truly yours,

Maureen A. Scott
Assistant Counsel

cc: International Transcription Service

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

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In the Matter of

**Federal-State Joint Board on
Universal Service**

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CC Docket No. 96-45

**INITIAL COMMENTS OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
TO THE NOTICE OF PROPOSED RULEMAKING
AND ORDER ESTABLISHING JOINT BOARD**

I. Introduction

A. Summary of NOPR and PaPUC's Position

These comments are submitted on behalf of the Pennsylvania Public Utility Commission (PaPUC) in response to the Commission's recent Notice of Proposed Rulemaking (NOPR) intended to implement, in part, the Congressional directives set out in Section 254 of the Communications Act of 1934, as added by the Telecommunications Act of 1996 (1996 Act).¹ In implementing the 1996 Act's requirements, the Commission has identified the following objectives: "(1) define the services that will be supported by Federal universal service support mechanisms; (2) define the appropriate support mechanisms to achieve the Act's universal service objectives; and (3) otherwise recommend changes to its regulations to implement the

¹In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Notice of Proposed Rulemaking and Order Establishing Joint Board, Adopted March 8, 1996; Released March 8, 1996.

universal service directives of the 1996 Act."² In short, the Act requires no less than a comprehensive evaluation of all existing federal support mechanisms.

The Commission's actions in this Docket will have a tremendous impact upon our ability, and the ability of Pennsylvania carriers to achieve Pennsylvania's universal service goals in the future. Some of the Commission's proposals in this Docket have the potential to completely eliminate or drastically reduce federal assistance to many Pennsylvania LECs. Loss of assistance through interstate funding mechanisms may transfer more of the cost recovery burden to intrastate rates and mechanisms. Because rural telephone companies³ are far more dependent upon the interstate assistance mechanisms at issue than the larger LECs and will be subject to far more serious problems if the ultimate mechanisms adopted by the Commission fall short of achieving their intended goals, the Commission should proceed more cautiously in the case of small rural telephone companies.

²NOPR at p. 8. The Commission notes that issues arising out of Section 254(k) which contains the Commission's responsibility ".....to establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services" are to be addressed in a separate rulemaking and, thus, these comments do not address this requirement. NOPR at fn. 32.

³The 1996 Act defines "rural telephone company" as a "local exchange carrier operating entity to the extent that such entity -- (A) provides common carrier service to any local exchange carrier study area that does not include either -- (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; (b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996." See, 1996 Act, sec. 102(a), § 214(e)(5).

We also recommend that the Commission, before deciding upon a particular alternative, make available data and information on the alternative's impact upon all carriers now receiving assistance from the federal universal service assistance mechanisms. It is extremely difficult to judge the merits of a particular approach, for instance the Benchmark Cost Model (BCM), without some indication of the actual impact or results of the model.

If the Commission uses a proxy approach, it is critical that transition mechanisms be established so that carriers receiving reduced assistance do not experience severe rate reallocations or rate shock in the process.

B. Universal Service in Pennsylvania

On July 8, 1993, Chapter 30 of the Public Utility Code, 66 Pa. C.S. § 3001 et seq. was enacted which provides a new framework designed to achieve many of the same goals contained in the 1996 Act. Chapter 30's Declaration of Policy, 66 Pa. C.S. § 3001, provides in pertinent part:

The General Assembly of Pennsylvania has declared that it is the policy of the Commonwealth to inter alia:

(1) Maintain universal telecommunications service at affordable rates while encouraging the accelerated deployment of a universally available, state-of-the-art, interactive, public-switched broadband telecommunications network in rural, suburban and urban areas, including deployment of broadband facilities in or adjacent to the public rights-of-way abutting public schools, including the administrative offices supporting public schools; industrial parks and health care facilities as defined in the act of July 19, 1979 (P.L. 130, No. 48), known as the Health Care Facilities Act.

(2) Ensure that customers pay only reasonable charges for local exchange telecommunications services which shall be available on a nondiscriminatory basis.

(3) Ensure that rates for noncompetitive telecommunications services do not subsidize the competitive ventures of providers of telecommunications services.

(4) Provide diversity in the supply of existing and future telecommunications services and products in telecommunications markets throughout this Commonwealth by ensuring that rates, terms and conditions for noncompetitive services, including access services, are reasonable and do not impede the development of competition.

(5) Ensure the efficient delivery of technological advances and new services throughout this Commonwealth in order to improve the quality of life for all Pennsylvanians.

(6) Encourage the provision of telecommunications products and services that enhance the quality of life of people with disabilities.

(7) Promote and encourage the provisions of competitive services by a variety of service providers on equal terms throughout all geographic areas of this Commonwealth.

(8) Encourage the competitive supply of any service in any region where there is market demand.

(9) Encourage joint ventures between local exchange telecommunications companies and other entities where such joint ventures accelerate, improve or otherwise assist a local exchange telecommunications company in carrying out its network modernization implementation plan.

One of the PaPUC's primary concerns has been how to maintain affordable local telephone service in the Commonwealth in light of Chapter 30's aggressive network modernization requirements and an increasingly competitive environment in the local service market which will only be magnified as a result of the 1996 Act's passage.⁴ To address this

⁴Chapter 30 requires LECs to commit to universal service broadband availability and conversion of 100% of interoffice and distribution telecommunications network to broadband capability by at least December 31, 2015. In accomplishing this objective, LECs are required

concern, we issued, on June 15, 1994, an Order initiating a formal investigation to examine and establish updated universal service principles and policies for telecommunications service in the Commonwealth.⁵

After the receipt of comments from interested parties, the PaPUC adopted an initial definition of "Basic Universal Service" which is discussed in Section II(B) of these comments. We are now examining the cost of basic universal service, the subsidy required to achieve universal service and how best to implement the support mechanisms, if any, once we determine the actual funding requirement. Recently, we concluded hearings on cost study and implementation issues. We also issued an Order designed to implement the 1996 Act and are requesting comment from parties on the need to revise any provisions in our existing or proposed rules. We anticipate receiving those comments before we are required to file our reply comments in this docket and will summarize any significant comments received for the Commission's benefit.

We provide the Commission with this information to give it an idea of the considerable efforts and progress made at the state level in addressing universal service issues. We hope that the Commission will attempt to establish policies which are complimentary of the actions of the states, such as Pennsylvania, on these issues.

to include reasonably balanced deployment between rural, urban and suburban areas within the LEC's service territory and broadband deployment is to be in or adjacent to public rights-of-way abutting public schools, including their administrative offices supporting public schools; industrial parks and health care facilities.

⁵See In Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services In the Commonwealth; Interlocutory Order, Initiation of Oral Hearings Phase, Order Initiating a Formal Investigation, Docket No. I-00940035 (Entered June 15, 1994).

C. Summary of PaPUC's Position on Specific Issues Raised in NOPR

A summary of the PaPUC's position on the specific issues raised in the NOPR is as follows:

1. **Definition of Universal Service.** We support the establishment of an easily defined, noncontroversial definition of universal service initially at the federal level which reflects the basic communications needs of a majority of subscribers nationwide, and which evolves over time to reflect changes in the communications needs and desires of subscribers, as evidenced through the operation of market choices by a substantial majority of residential customers. This approach is consistent with the 1996 Act. It is also consistent with our approach in Pennsylvania. We for the most part support the Commission's proposed "core" definition of universal service, however, would encourage the Commission to also include annual local directories and access to telecommunications relay services and other services designated for persons with disabilities.

2. **Implementation.** The PaPUC favors a more forward looking approach to calculating the level of support required to assure that carriers are financially able to provide the services identified for inclusion among those to be supported by universal service funds in rural, insular, and high-cost areas. The PaPUC is examining the Hatfield model for use in Pennsylvania which incorporates significant portions of the BCM currently under consideration by the Commission. We tentatively concluded that for cost study purposes, disaggregation down to the wire center level is preferred. We recognized, consistent with the 1996 Act, that it may be appropriate to define the study areas of smaller LECs in a manner different than that used for larger LECs and that the service areas of small LECs may be a suitable study area for universal service purposes.

Our proposed state rules contemplate the identification and use of a "basic universal service rate" which we have defined as the maximum level which telephone consumers can be expected to pay for basic universal service without experiencing an unacceptable effect on basic universal service penetration rates in the Commonwealth. The scope of our state support mechanism would be restricted to subsidizing basic universal service for telephone consumers whose cost or price of basic universal service is found

by the PaPUC at some point in the future to be above the basic universal service rate.⁶

3. Other Universal Service Support Mechanisms. The PaPUC opposes increases to the flat monthly subscriber line charges (SLC) by the Commission in implementing the provisions of the 1996 Act. Increases to the SLC are inconsistent with the FCC's goals and objectives under the 1996 Act. Interexchange carriers should continue to pay a portion of LEC NTS costs, although we would not oppose collection of this charge on a flat-rate basis in the future on all IXC's, telecommunications providers and resellers. The Commission should consider restructuring, rather than abandoning, other support mechanisms such as LTS consistent with the provisions of the 1996 Act.

4. Administration of Support Mechanisms. For purposes of our state support mechanisms, we have proposed that a third party administrator be designated to establish and maintain a universal service fund. Given the requirements of the 1996 Act for separate and distinct state and federal funds and the "large-scale information processing and data base capabilities" that will be necessary to manage the fund, we believe that the FCC should consider the same approach for purposes of administering the federal fund. We believe that the National Exchange Carriers Association (NECA) has demonstrated its ability to perform this function in a fair and efficient manner and that it should continue to undertake these responsibilities.

II. Discussion

A. Goals and Principles of Universal Service Support Mechanism; (NOPR, paras. 3-12).

Section 254(b) of the 1996 Act sets out seven principles upon which the Commission and Joint Board are to base federal universal service policies. In response to the Commission's request for comment on each of these seven principles, we provide the following general

⁶We recognize that there would be difficulties in attempting to define a "basic universal service rate" on a nationwide basis because of the many variables used in setting local service rates and the differences between states. Consequently, the Commission should rely upon the individual states in assuring that the "affordability" requirement of the 1996 Act has been met.

comments:

(1) Quality services at just, reasonable and affordable rates.

In ensuring that "quality" services are available to subscribers, we agree with the Commission's initial determination that this principle does not require the Commission to develop a legion of new telephone service quality and technical standards.⁷ Rather than "reinventing the wheel," the Commission should use existing standards or defer to state commissions in ensuring that the services supported by the federal fund meet minimum or acceptable industry service standards.

The PaPUC has extensive service quality standards contained at 52 Pa. Code Chapter 63. Additionally, Chapter 30 of the Pennsylvania Public Utility Code requires, inter alia, that a LEC's alternative regulation and network modernization plan contain "a comprehensive program of service quality standards in accordance with section 1501 (relating to character of service and facilities), including procedures for commission review." 66 Pa. C.S. § 3004(d). Further, under the 1996 Act, States may require parties to include quality of service provisions in interconnection agreements negotiated or arbitrated pursuant to § 251. Given the close oversight by states in this area, the Commission should not impose duplicative, burdensome requirements

⁷NOPR at para. 68. The Commission refers to the American National Standards Institute Committee T-1, Electronic Industry Association, and the Telecommunications Industry Association. Additionally, the Commission notes that through 47 C.F.R. §§43.21-22, it requires information from LECs on service installation and repair intervals, trunk blockage rates and switch outage information which is reported on ARMIS Report Nos. 43-05, 43-06 and 43-07, and inquires whether these requirements should be extended to smaller rural LECs. The PaPUC believes that it would be far more reasonable to rely upon service quality information already received and collected by State commissions for small rural telephone companies rather than subjecting them to a potentially burdensome, at times duplicative, federal information reporting requirement.

on LECs already subject to similar requirements at the state level, but rather should defer to the states to ensure that the quality service standard of the 1996 Act is met.

The more difficult issue raised in the Commission's NOPR pertains to the concept of "affordability" and appropriate measures to assist the FCC in assessing whether "affordable" service is being provided to all Americans. With jurisdiction over local service rates, state regulators are undoubtedly closer to the issue of local rate affordability than any one else. As discussed in Section II(C) of these comments, in Pennsylvania, we have asked parties to comment on proposed rules which define a "basic universal service rate" or the maximum level which telephone consumers can be expected to pay for basic universal service without experiencing an unacceptable effect on basic universal service penetration rates in the Commonwealth. We recognized that such a basic universal service rate could be identified on several different bases, inter alia, a state wide or a regional or type of customer basis. Under our proposed rules, the scope of the universal service support mechanism would be restricted to subsidizing basic universal service for telephone consumers whose cost or price of basic universal service is found by the PaPUC to be above the universal service rate.

Nonetheless, as alluded to earlier, we believe that it would be difficult for the Commission to develop a single uniform "basic universal service rate" for utilization on a nationwide basis in making affordability determinations because of the many variables used in setting local service rates and differences between states. Consequently, it is our recommendation that the Commission defer to the determinations of state regulators in assuring that the "affordability" criteria has been met. Above all, the Commission should not attempt through the federal fund to accomplish the affordability objective by trying to control or

otherwise hamper the discretion of state regulators to determine appropriate universal service rate levels within their own jurisdictions.

(2) Access by all regions of the Nation to advanced telecommunications and information services.

We agree that this principle instructs the Commission to focus specifically on the availability of advanced telecommunications and information services for "all regions of the Nation." However, availability of advanced telecommunications services must be examined in the context of affordability and the provisions of §§ 254(c)(1), 254(g) and 706 of the 1996 Act.⁸ Additionally, the Act as a whole appears to allow the individual states to accomplish infrastructure modernization at their own pace, as long as it is reasonable (§ 706), given local market conditions. Section 254(g) of the 1996 Act provides that states may expand upon the federal definition of universal service, and include presumably more advanced services, to the extent market conditions within their jurisdiction warrant.

(3) Access by rural and low-income subscribers to reasonably comparable services at reasonably comparable rates to services provided in urban areas.

At para. 14, the FCC notes that the comparability standard requires it to go beyond the purpose and approach of the current USF program by focusing on the comparability of access to services available throughout the country as well as on the comparability of rates. We would

⁸Section 254(c)(1) of the Act directs that: The Joint Board in recommending, and the Commission in establishing, the definition of the services that are supported by Federal universal service support mechanisms shall consider the extent to which such telecommunications services--(A) are essential to education, public health, or public safety; (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (C) are being deployed in public telecommunications networks by telecommunications carriers; and (D) are consistent with the public interest, convenience, and necessity."

agree that for purposes of designating services subject to the federal fund, the Commission is required to consider the availability of the service on a nationwide basis. Chapter 30 of the Pennsylvania Public Utility Code contains similar requirements for comparability of service between rural, suburban and urban areas of Pennsylvania. We would recommend that the Commission's "comparability of rate" determinations be based upon, inter alia, rural, suburban and urban geographic density categories.

(4) Equitable and nondiscriminatory contributions by all providers of telecommunications services.

All carriers providing interstate services should be subject to the "equitable and nondiscriminatory contribution" requirement of the 1996 Act. The Commission seeks comment on whether any circumstances would justify exempting interstate providers from the requirement to make contributions to the fund. The PaPUC is not aware of any circumstances at this time.

(5) Specific and predictable support mechanisms at federal and state level.

This principle directs that subsidy mechanisms at both the state and federal levels be explicitly defined in the future with any implicit subsidies eliminated. In our state proceeding, LECs have indicated in their comments that there is a need for rate rebalancing, to eliminate existing implicit subsidies at the state level, so that they can effectively compete with new entrants in the future. We are in the process of examining this issue in our proceeding in Pennsylvania.

(6) Access to advanced telecommunications services for schools, health care, and libraries.

The PaPUC agrees with the Commission's goals in this area and intends to provide

comments on this issue in its reply after it has had an opportunity to confer with those organizations directly affected by the 1996 Act's provisions in Pennsylvania, i.e., representatives from the Pennsylvania Department of Education, the Pennsylvania Department of Health and Pennsylvania's libraries.

(7) Such additional principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with the Act.

The Commission seeks comment on additional principles that it and Joint Board may consider in determining whether a service should be included within the definition of universal service. We refer the Commission to the July, 1995 NARUC White Paper on Universal Service which contained a list of considerations in determining whether a service should be eligible for universal service support which we endorse consistent with our prior comments.

B. Definition of Universal Service; (NOPR, paras. 13-23).

As the Commission notes, the 1996 Act identifies two primary categories of services, each of which has two separate subcategories of intended beneficiaries intended to receive universal service support: (1) a "core" group of services, the provision of which is to be supported for consumers with low incomes or in rural, insular, and high cost areas; and (2) additional services, including advanced telecommunications and information services, for providers of health care or educational services, as described in Sections 254(b)(6) and 254(h). NOPR at para. 11.

The Commission proposes to include the following services in the "core" federal definition of universal service: (1) voice grade access to the public switched network, with the ability to place and receive calls; (2) touch-tone; (3) single-party service; (4) access to

emergency services (911); and (5) access to operator services. NOPR at para. 16. Parties are asked to discuss the extent to which each of the proposed services meet the principles established in § 254(b) and the criteria of § 254(c)(1). The Commission asks parties to identify any additional services that they believe meet the statutory criteria of § 254(c)(1) and should also be covered by the federal universal service fund.

We support the services identified by the Commission for inclusion in the "core" definition of universal service at the federal level and as discussed below we believe that they meet both the § 254(c)(1) criteria and the § 254(b) principles. In our April 10, 1995 decision⁹ in our generic state investigation into universal service, we defined universal service in an almost identical manner:

Basic universal service - For purposes of this investigation, the term shall consist of the following service components:

- a) single party, voice grade, incoming and outgoing access to the public switched network and usage within a local calling area;
- b) touch tone capacity;
- c) annual local directory;
- d) access to operator services;
- e) access to directory assistance;
- f) access to telecommunications relay service and other services designed for persons with disabilities; and
- g) access to emergency services.

In making this determination, we found that these services were clearly essential to all Pennsylvanians and that other services and service capabilities were subject to continuing debate as to the need and appropriateness of including them for universal service funding purposes.

⁹See In Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth; Declaratory Order, Advance Notice of Proposed Rulemaking, Scheduling of Public Forum; Docket No. I-00940035 et al., Order (Entered April 10, 1995).

We also agreed with commentators that it was appropriate initially to adopt a more limited definition which was simple, easily definable and noncontroversial. By adopting a more limited initial definition of "basic universal service" in Pennsylvania, the initial development of cost studies by parties would be facilitated since all of the elements of "basic universal service" would easily lend themselves to an analysis of true economic costs. Order at p. 24.

In our opinion, these services also clearly meet the § 254(c)(1) criteria contained in the 1996 Act and are otherwise in accordance with the § 254(b) principles discussed above. Voice grade access with the ability to place and receive calls is fundamental to concept of universal service, as is single party telephone service. These services are clearly included within the definition of universal service today and should continue to be included. We support the "voice grade access" limitation at this time as consistent with the four criteria specified. We interpret "single party service" as including local service usage, however, the Commission may want to further clarify this point.

The other services which have been included by the Commission clearly meet the Act's criteria and should be included in the federal definition. As in our state proceeding, we interpret "access" to operator services and "access" to directory assistance to mean the availability of these services, as opposed to actual usage. The Commission's inclusion of access to emergency services in the "core" federal definition of universal service is also consistent with our definition at the state level. The Commission inquires whether it should include access to E911, which adds capabilities such as automatic number identification and automatic location information to the basic 911 service. The PaPUC supports inclusion of access to E911 in addition to basic 911 services in the core federal definition of universal service. Once again, this is consistent with

our approach in Pennsylvania.

We would encourage the Commission to include two additional services contained in Pennsylvania's definition of universal service: annual local directory listings and access to telecommunications relay service and other services designed for persons with disabilities. We believe that these two services also meet the four criteria contained in the Act, and thus, that their inclusion would be appropriate.¹⁰ These services are now available to the substantial majority of subscribers and are in the public interest.

Many of the advanced services listed by the Commission are still in the early stages of development and are clearly not subscribed to by the substantial majority of subscribers and thus should not be included in the definition of universal service at this time. It is clear that Congress intended that the definition of universal service evolve over time and that it would be subject to periodic, but regular reviews, by both the Joint Board and the FCC.¹¹

¹⁰While the Commission notes that it has not included Telecommunications Relay Services (TRS) within the list of services proposed for universal service support because those services are already served by the existing TRS support mechanism established pursuant to Section 401 of the Americans with Disabilities Act, 47 U.S.C. § 225, we do not believe that this should preclude the Commission from including "access" to TRS services or "access" to other services designed for persons with disabilities within the core definition of universal service at the federal level.

¹¹The FCC seeks comment on how and with what frequency it should evaluate its initial list of services adopted in this proceeding to comply with the Congressional directive that the definition of universal service evolve over time. The Commission cites to a California Public Utilities Commission proceeding wherein parties have suggested that any universal service definition be revisited at fixed intervals, such as every three or five years. In Pennsylvania, we initiated a Notice of Proposed Rulemaking to solicit comment on the development of procedures and parameters applicable to basic universal service evolution. We sought specific comment on the procedures discussed in the July NARUC Staff Position Statement on Universal Service. In addition to discussing the use of customer surveys, the convening of periodic customer hearings by regulators, the NARUC Position Statement also recommended that states establish periodic reporting requirements which include capital deployment information, information on service offerings and penetration rates to assist regulators in evaluating demand oriented universal

With respect to the second group of services, advanced telecommunications services for schools, libraries and health care providers, the PaPUC was unable in the short time period allotted for comment to obtain feedback from the Pennsylvania Department of Health, the Pennsylvania Department of Education and individuals representing Pennsylvania libraries. It is our intent to coordinate our comments with these organizations which are directly affected by the Commission's proposals and to provide comment on this and all related issues in our reply comments in this Docket.¹²

C. Implementation; (NOPR, paras. 27-40).

The Commission seeks comment on methods for determining the level of support required to "assure that carriers are financially able to provide the services identified for inclusion among those to be supported by universal service funds in rural, insular, and high-cost areas." NOPR at para. 27. The Commission asks parties to comment on the continued use of Part 36 and the current universal service fund (USF) program and the dial equipment minute (DEM) weighting assistance programs.¹³ NOPR, paras. 28-30.

service evolution. We support the Commission's initial conclusion to rely on information sources that already exist and to initiate additional information collection efforts only if that information proves inadequate and only when the Commission contemplates changes in the list of services that should receive universal service support. We would be willing to share any information collected as a result of our state investigation in Pennsylvania with the Commission if so desired.

¹²Under Chapter 30 of the Pennsylvania Public Utility Code, carriers are required to deploy broadband facilities in or adjacent to public right-of-way abutting public schools, including their administrative offices supporting public schools; industrial parks and health care facilities.

¹³To avoid unnecessary duplication, the Commission is incorporating the portion of the CC Docket No. 80-286 record that relates to changing the support mechanisms in its jurisdictional separations rules into this proceeding.

The Commission also asks parties to comment specifically on which, if any, of the proposals in Docket 80-286 are consistent with the requirements and intent of the 1996 Act. NOPR at para. 39. In particular, the Commission seeks comment on the BCM methodology jointly sponsored by US West, Nynex, MCI and Sprint in CC Docket No. 80-286.¹⁴ The Commission inquiries as to Model's applicability to rural areas and whether it should base its determinations on embedded costs or forward-looking costs to the extent that costs are relevant to the support mechanisms for rural, insular, and high-cost areas. NOPR, para. 32.

Since our state proceeding is still ongoing, we are not in a posture to take a definitive position on some of the issues raised in the NOPR without the risk of prejudging these same issues at the state level. Nonetheless, we have made certain tentative findings on some of the issues raised in the NOPR which we included in our original comments in Docket 80-286 and summarize briefly below. There was general agreement by participants to our universal service proceeding in Pennsylvania, that a TS-LRIC methodology is the appropriate standard for the development of cost studies and cost allocations for universal service determinations. Based upon the almost unanimous support for this methodology at the state level, we tentatively endorsed the TS-LRIC model as the appropriate basis for determining the cost of providing universal service in Pennsylvania.¹⁵

¹⁴As the Commission notes the Benchmark Costing Model produces a benchmark cost range for a defined set of residential telecommunications services assuming efficient wireline engineering and design, and using current technology. It is not based upon the costs reported by any company, nor the embedded cost to a company of providing service today. The Model bases projected costs on the least-cost wireline technology to serve a particular area, given that area's geographic and population characteristics.

¹⁵Nonetheless we also determined not to utilize a pure TS-LRIC approach in Pennsylvania. Many smaller independent LECs argued that pure application of TS-LRIC would inappropriately preclude reasonable allocation of joint and common costs to basic universal

We also tentatively endorsed, based upon a careful review of the comments submitted in the second phase of our universal service investigation, a well designed, forward looking model as a valid, straightforward approach to identifying the cost of basic universal service. We were presented with one such model jointly sponsored by both AT&T and MCI, termed the Hatfield study.¹⁶ Since the Hatfield model was originally presented to our Commission in July, 1995, it is our understanding that it has been substantially revised. The most profound change is that it now incorporates many aspects of the BCM, or the model currently under consideration by the Joint Board and the Commission. Inclusion of the BCM in the Hatfield model means that each CBG in the United States is now assigned to a specific LEC wire center. This is now consistent with our original findings wherein we expressed a preference for disaggregation down to the wire center level or beyond if appropriate.¹⁷ It is our understanding that the revised model has gained support from the original proponents of the BCM in addition to the proponents

service. Without allocation, cost studies would not reflect a LEC's total cost in providing basic universal service. We tentatively agreed with the smaller independent LECs that a portion of all joint, shared and common costs, including overhead costs, should be reasonably assigned to basic universal service. We also tentatively concluded that the local loop costs themselves are joint or shared costs since the loop is utilized to provide a wide array of services, including basic universal service. Consequently, some portion of the loop should be assigned to basic universal service, consistent with the treatment of other joint, shared or common costs. See In Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth; Interlocutory Order, Initiation of Oral Hearings Phase, Docket No. I-00940035, Order (Entered September 5, 1995)

¹⁶Because of the genuine resource concerns of smaller LECs, we found that a smaller LEC should be able to choose between submitting its own cost study or electing to submit a cost study proxy of a larger LEC. We recommend that the Commission incorporate similar flexibility into any approach adopted at the federal level with respect to small rural telephone companies as defined by the 1996 Act.

¹⁷The data contained in the original Hatfield study submitted in July, 1995, disaggregated areas into eight density cells.

of the Hatfield Model.¹⁸

It is our further understanding, however, that there are still several important differences between the BCM under consideration by the Commission and the Hatfield model under consideration in Pennsylvania.¹⁹ Beyond our stated preference for a forward-looking model, we cannot endorse the Hatfield/BCM study until we have had an opportunity to examine it in more detail within the context of our state proceeding. Nonetheless, we believe that the Hatfield/BCM model contains many of the elements necessary for utilization in the universal service context and that the Commission should continue to seriously study its use at the federal level to determine universal service costs, as we will be doing in Pennsylvania later this year.

The 1996 Act allows the Commission and the Joint Board to make a separate determination with regard to the study areas of small rural telephone companies as defined in the 1996 Act.²⁰ While we expressed a preference for disaggregation down to the wire center or beyond in our proceeding in Pennsylvania, we also determined that it may be more

¹⁸The PaPUC originally had strong reservations concerning the originally presented BCM, however, we will be reviewing the modifications made to the revised model now before us at the state level.

¹⁹It is our understanding that the Hatfield model and BCM model differ in several respects including the following: (1) the Hatfield model accounts for business lines and multiple-line residences in the loop plant which have been excluded from the loop facilities calculation in the BCM, (2) the Hatfield study continues to use its own switching investment model, (3) Hatfield uses significantly lower investments per line in DLC equipment than the BCM default numbers indicate, and (4) Hatfield uses intermediate BCM results to break the loop investment into categories for applying expense factors based on ARMIS reports and to compute capital carrying costs for the network investment.

²⁰The Commission at para. 44, with respect to rural telephone companies, makes reference to the provision in the 1996 Act which states that a "service area" means a company's study area, "unless and until the Commission and the States, taking into account the recommendations of a Federal-State Joint Board instituted under Section 410(c), establish a different definition of service area for such a company."

appropriate to use a different standard in the case of a small rural LEC. In this regard, we found that it simply may be more appropriate to use the small LEC's entire service territory as its cost study area, as is done today.

The Commission also asks parties to comment on whether support should be calculated based on inputs (for example facility costs would determine subsidy amounts) or based on outputs (the price of services would determine support levels). NOPR at para. 24. As discussed earlier in these comments, our proposed rules in Pennsylvania contemplate the use of costs to calculate the subsidy amount and the use of a "basic universal service rate" to determine the actual support level received by carriers. We defined the "basic universal service rate" as "the maximum level which telephone consumers can be expected to pay for basic universal service without experiencing an unacceptable effect on basic universal service penetration rates in the Commonwealth." We sought comment on how the basic universal service rate should be identified i.e., on a state wide basis or a regional or type of customer basis. We also asked participants to present evidence regarding the effect of various price levels on penetration rates utilizing available data both here in Pennsylvania and in other jurisdictions and to compare these levels with service rates in the Commonwealth today. Finally, we asked participants to provide an analysis of the relationship and evaluate hypothetical subsidies between the recommended universal service rate and cost study results.²¹

²¹Most LECs in Pennsylvania believe that rate rebalancing is necessary in order for them to adequately respond to the increasing pressures of competition. LECs argue that without rate rebalancing, new entrants will "cream skim" markets where services are priced significantly above cost and ignore markets for services which are priced nominally above, at or below cost. We have asked parties to our state proceedings to submit projected cost information regarding the level of rebalancing which may be necessary to meet competitive pressures and the potential implications for universal service. We will be examining this issue in our state proceedings.

Under our proposed rules, the scope of the universal service fund is restricted to subsidizing basic universal service for telephone consumers whose cost or price of basic universal service is found by the PaPUC at some point in the future to be above the basic universal service rate.²² Each local service provider which has basic universal service subscribers in a high cost service area would then provide a monthly credit to each of its basic universal service subscribers equal to the amount that the cost of basic universal service established by the Commission for the subscriber's cost of service area exceeds the basic universal service rate.²³ We are currently seeking comment from participants on the impact of the 1996 Act upon our proposed regulations.

D. Eligibility for Support; (NOPR, paras. 41-49).

The Commission seeks comment on standards contained in § 214(c)(1) which require

²²The PaPUC's proposed regulations defined universal service rate as "a rate, established by the Commission, which represents the maximum rate level which can be charged telephone customers for basic universal service without affecting the penetration rate of telephone service in the Commonwealth. The Commission will periodically review and evaluate the universal service rate to assure the rate level is fulfilling its intended purpose and may revise the rate if necessary. Universal service rates applicable to a specific region of the Commonwealth or type of customer may also be established by the Commission."

²³We recognize that some of these concepts that we are considering at the state level would represent a dramatic departure from the existing formulas and mechanisms utilized at the federal level, i.e., the USF fund and the DEM Weighting mechanism. If the Commission decides against the proxy model and continues to use actual costs, nothing in the 1996 Act would appear to preclude the Commission from continuing to use its current Part 36 procedures or the USF fund and DEM Weighting mechanism and a separate independent mechanism for the distribution of assistance to carriers which are not subject to the Commission's separations process as long as the end result is neutral and non-discriminatory. We also believe that the modifications to the USF fund and DEM Weighting mechanism that the FCC originally sought comment on prior to passage of the 1996 Act still are viable after the provisions of the 1996 Act are considered. Should the Commission determine to make adjustments to its existing mechanisms, we adhere to the positions taken in our October 10, 1995 comments in Docket 80-286.

an eligible carrier to offer "the services that are supported by Federal universal service support mechanisms under Section 254(c), either using its own facilities and resale of another carrier's services. Each eligible carrier must also advertise the availability of such services and the charges for those services using media of general distribution. Clearly, the 1996 Act vests in the states authority to determine whether these criteria have been met. Therefore, we recommend that rather adopting "standards for compliance with these requirements", the Commission adopt "guidelines" for states to follow in determining whether these standards have been met.

E. Support for Low-Income Consumers; (NOPR, paras. 50-58).

The Commission requests comment regarding its overall responsibilities under Sections 1 and 254 with regard to low-income customers. NOPR at para. 50. Consistent with our comments in the Subscribership Docket, we do not believe that it is necessary for the Commission to mandate federal policies covering toll limitation services or service deposits. We believe that many states, including Pennsylvania, already have in place toll limitation and service deposit policies which are consistent with the FCC's goals in this proceeding.

We are currently considering whether our intrastate fund's scope should be expanded to contribute to other programs including low income assistance programs, Link-up America, Lifeline programs, voice mail service for the homeless, services for persons with disabilities, health and education communications projects and line extensions. We generally support efforts to ensure that the communications needs of low income customers are adequately met in the future.

F. Schools, Libraries and Health Care Providers; (NOPR, paras. 71-111).

Among the seven universal service principles established in the 1996 Act is the principle that "elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services." Section 254(c) permits the Commission to designate additional, special services for universal service support for eligible schools, libraries and health care providers. Section 254(1) relates to support mechanisms that would enable eligible schools, libraries, and rural health care providers to receive both the core and advanced telecommunications services included among those eligible for universal service support.

The PaPUC supports the Commission's proposal to include the set of services designated for federal universal service support pursuant to Section 254(c)(1) and any other services designated for support pursuant to Section 254(c)(3) be made available to schools and libraries (NOPR at para. 77). We hope to be able to provide the Commission with Pennsylvania's viewpoints on this and related issues once we have had an opportunity to discuss this matter with representatives from Pennsylvania's libraries and Departments of Health and Education.

G. Other Universal Service Support Mechanisms; (NOPR, paras. 112-115).

We do not support increases to the flat monthly subscriber line charges. Increasing the SLC cannot help but have an adverse impact upon subscribership levels. We agree with the Commission's observation that "[r]ecovery of the full interstate allocation of common line costs directly from end-users might cause the flat monthly rates paid by certain subscribers to exceed acceptable levels and could have an adverse impact on telephone subscribership." Notice at para. 113.

The PaPUC strongly opposes transferring the subsidy burdens associated with the CCLC and LTS to the end user subscriber. Imposition of the CCLC upon interexchange carriers continues to be appropriate however, the Commission should consider recovering this support from all IXC's and telecommunications providers or resellers on a flat rate basis. We would also support restructuring the LTS support mechanism consistent with the "non-discrimination" requirement of the 1996 Act.

H. Administration of Support Mechanisms; (NOPR, paras. 116-131).

The PaPUC limits its comments on this section to the question of who should administer the federal universal service fund. Notice at paras. 127-131. The Commission proposes several alternatives including: 1) a non-governmental fund administrator, or 2) state public utility commissions.

For purposes of our state fund, we have proposed that a third party administrator be designated to establish and maintain a universal service fund. The administrator will be responsible for auditing the fund on an annual basis and maintaining the financial viability of the fund. The administrator will also be responsible for assessing telecommunications carriers for contributions to the fund and for receiving, evaluating and paying universal service reimbursement claims submitted by local service providers. Section 63.144 of our proposed rules provide that the administrator will calculate a contributing telecommunications provider's assessment amount by applying the Commission's approved assessment rate for that year to the contributing telecommunications provider's gross intrastate operating revenues as reflected in assessment reports filed with the Commission. Each contributing carrier would be required to pay the assessment amount in full to the administrator within 30 days of the issuance of